

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013100790

ORDER TO SHOW CAUSE WHY
PARTIES SHOULD NOT BE
ORDERED TO PAY EXPENSES

On October 21, 2013, Warren Finn, attorney for Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request against the Los Angeles Unified School District (District). On October 23, 2013, OAH issued an initial scheduling order in this matter, which set mediation on November 26, 2013.

On November 20 2013, Mr. Finn's assistant confirmed that the mediation set for November 26, 2013, would proceed as scheduled. On November 26, 2013, Administrative Law Judge (ALJ) Elsa Jones arrived at the offices of District, at the scheduled time to conduct the mediation in this matter. Also present was a Spanish language interpreter, provided by OAH. At that time, District's representative informed ALJ Jones that Mr. Finn had canceled the mediation the week prior to November 26, 2013. Neither party had informed OAH of the cancelation. ALJ Jones dismissed the Spanish language interpreter and returned to her office. OAH bore unnecessary expenses in having to provide a mediator and an interpreter for a mediation that was canceled well in advance of November 26, 2013.

On December 10, 2013, OAH was contacted by District's representative with a request to set mediation for the morning of December 11, 2013. The representative informed OAH that Mr. Finn was supposed to have requested the December 11, 2013, mediation on behalf of the parties, but had failed to do so. OAH calendared the mediation for the morning of December 11, 2013, as requested by District, assigned an ALJ to the mediation and ordered a Spanish language interpreter.

On December 10, 2013, Mr. Finn left a message on OAH's after-business-hours settlement phone message line, stating that he had a conflicting mediation on the morning of December 11, 2013, and requesting that the mediation in this matter be convened in the afternoon of December 11, 2013. OAH informed the parties that the request to reset the mediation could not be accommodated. OAH then canceled the Spanish interpreter for December 11, 2013.

To summarize, the parties first confirmed the November 26, 2013 mediation, then canceled it, but failed to notify OAH. Then, on December 10, 2013, the parties made a late request for a mediation to be set within 24 hours of the request, which OAH accommodated; however, Student's attorney then canceled that mediation and requested a new mediation for a different time on the same date as the canceled mediation. The parties conduct in this matter has caused OAH to bear expenses unnecessarily, consisting of ALJ time and interpreter costs.

ORDER TO SHOW CAUSE

Under the reauthorized Individuals with Disabilities Education Improvement Act (IDEA 2004), a due process hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of the due process notice, in the absence of an extension. (Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Parties to a due process hearing under the IDEA are entitled to mediation. (20 U.S.C. § 1415(e)(1); Ed. Code § 56501, subd. (b).) Here, OAH has complied with the requirements of the IDEA by setting mediation twice, both of which the parties canceled. In order to comply with the strict and short time frames applicable to special education administrative matters, it is imperative that the parties conduct themselves professionally, timely notify OAH of events that affect the calendar and refrain from engaging in conduct that results in waste of judicial resources.

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 [“Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”].)

The parties are ordered to show cause why they should not be ordered to pay costs incurred by OAH due to their conduct concerning the scheduling and cancellations of mediations in this matter. **The parties, or their representatives, are ordered to file a written response with OAH by not later than 5:00 p.m. on December 16, 2013,** by facsimile transmission to (916) 376-6319. The parties shall serve a copy of the response upon each other by facsimile. The facts asserted in the responses shall be supported by declarations sworn under oath. At a minimum the responses shall address whose responsibility it was to notify OAH of the cancellation of the November 26, 2013 mediation; why the parties failed to notify OAH of the cancellation of the November 26, 2013 mediation; how the parties arrived at an agreement amongst themselves to request mediation for the morning session of December 11, 2013; whose responsibility it was to timely request the December 11, 2013 mediation; why the party failed to timely request the mediation, thus resulting in a late request by District on December 10, 2013; and, at what point was Mr. Finn aware of his conflicting December 11, 2013 mediation and whether he informed District of this conflict prior to District's request for mediation on December 11, 2013.

A telephonic status conference shall take place at 1:30 p.m. on Wednesday, December 18, 2013. OAH shall initiate the telephone call to the parties. Should the parties fail, without excuse, to timely file a response or participate in the telephonic status conference, OAH may order payment of costs without further hearing or take other appropriate action.

ORDER

1. An Order to Show Cause as to Why the Parties Should Not be Ordered to Pay Expenses is hereby issued. Parties must file a response and PHC statement no later than 5:00 p.m. on December 16, 2013.
2. A telephonic status conference is set for 1:30 p.m. on December 18, 2013.

Dated: December 11, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings